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6 *Attorneys for Defendants*
Queenstake Resources USA Inc. and
7 *Queenstake Resources USA Inc. Employee Benefit Plan*

8
9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**
11

12 **NORTHEASTERN NEVADA**
13 **REGIONAL HOSPITAL,**

Case No.: 3:09-cv-00414-ECR-RAM

14 Plaintiff,

ANSWER

15 vs.

16 **QUEENSTAKE RESOURCES USA**
17 **INC.; QUEENSTAKE RESOURCES**
18 **USA INC. EMPLOYEE BENEFIT**
19 **PLAN,**

20 Defendants.
21 /

22 Defendants, QUEENSTAKE RESOURCES USA INC., and QUEENSTAKE
23 RESOURCES USA INC. EMPLOYEE BENEFIT PLAN, by and through their attorneys,
24 GOICOECHEA, DI GRAZIA, COYLE & STANTON, LTD., of Elko, Nevada, in answer to
25 Plaintiff's Complaint, admit, deny and allege as follows:

26 **PARTIES**

- 27 1. Defendants admit Paragraph 1.
28 2. Defendants admit Paragraph 2.
29 3. Defendants admit Paragraph 3.

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JURISDICTION AND VENUE

4. Defendants admit Paragraph 4.

**QUEENSTAKE PLAN PARTICIPANTS' ADMISSIONS TO
NORTHEASTERN NEVADA REGIONAL HOSPITAL**

5. Defendants admit Paragraph 5.

6. Defendants do not have knowledge or information sufficient to form a belief as to the allegations of Paragraph 6.

THE QUEENSTAKE PLAN AND THE QUEENSTAKE MEMBER'S COVERAGE THEREUNDER

7. Defendants admit Paragraph 7.

8. Defendants admit Paragraph 8.

9. Defendants admit Paragraph 9.

10. Defendants admit Paragraph 10.

11. Defendants admit Paragraph 11.

THE QUEENSTAKE PLAN AND THE NMN PPO CONTRACT

12. Defendants admit Paragraph 12.

13. Defendants admit Paragraph 13.

14. Defendants deny Paragraph 14.

NNRH'S CLAIM FOR BENEFITS FOR MEDICAL CARE PROVIDED TO QUEENSTAKE MEMBERS

15. Defendants do not have knowledge or information sufficient to form a belief as to the allegations of Paragraph 15.

16. Defendants do not have knowledge or information sufficient to form a belief as to the allegations of Paragraph 16.

17. Defendants admit that NNRH's claims are for \$243,295.15 but deny that that amount is the correct amount due.

18. Defendants do not have knowledge or information sufficient to form a belief as to the allegations of Paragraph 18.

19. Defendants admit that there has been a failure to pay certain amounts which are due but deny that the amounts claimed are the amounts due. All other allegations of Paragraph

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1 19 are denied.

2 20. Defendants do not have knowledge or information sufficient to form a belief as to
3 the allegations of Paragraph 20.

4 21. Defendants do not have knowledge or information sufficient to form a belief as to
5 the allegations of Paragraph 21.

6 22. Defendants do not have knowledge or information sufficient to form a belief as to
7 the allegations of Paragraph 22.

8 23. Defendants do not have knowledge or information sufficient to form a belief as to
9 the allegations of Paragraph 23.

10 24. Defendants do not have knowledge or information sufficient to form a belief as to
11 the allegations of Paragraph 24.

12 25. Defendants do not have knowledge or information sufficient to form a belief as to
13 the allegations of Paragraph 25.

14 **FIRST CAUSE OF ACTION**

15 **(Civil Enforcement Action Under ERISA)**

16 26. Defendants repeat and reallege their responses as if set forth fully herein.

17 27. Defendants do not have knowledge or information sufficient to form a belief as to
18 the allegations of Paragraph 27.

19 28. Defendants do not have knowledge or information sufficient to form a belief as to
20 the allegations of Paragraph 28.

21 29. Defendants do not have knowledge or information sufficient to form a belief as to
22 the allegations of Paragraph 29.

23 30. Defendants do not have knowledge or information sufficient to form a belief as to
24 the allegations of Paragraph 30.

25 31. Defendants do not have knowledge or information sufficient to form a belief as to
26 the allegations of Paragraph 31.

27 32. Defendants admit that NNRH has retained the services of The Law Offices of
28 Mark Douglas Herbert, A Professional Corporation, to prepare and prosecute its action. All

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1 other allegations of Paragraph 32 are denied.

2 33. Defendants do not have knowledge or information sufficient to form a belief as to
3 the allegations of Paragraph 33.

4 **AFFIRMATIVE DEFENSES**

5 **FIRST AFFIRMATIVE DEFENSE**

6 The amounts asserted to be due from Defendants do not reflect proper discounts that were
7 set forth in the terms and conditions of the contract to which Plaintiff asserts liability is
8 predicated.

9 **SECOND AFFIRMATIVE DEFENSE**

10 Plaintiff's claim is barred by Plaintiff's failure to exhaust all administrative and
11 contractual remedies under the claims procedures of the self-funded ERISA health care plan, or
12 other applicable plan.

13 **THIRD AFFIRMATIVE DEFENSE**

14 Plaintiff has no colorable claim to vested benefits in connection with the self-funded
15 ERISA health care plan, or other applicable plan.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 Defendants assert that Plaintiff's claims are barred to the extent Plaintiff seeks monetary
18 damages under ERISA as such damages are not recoverable under ERISA.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 Plaintiff has failed to mitigate its damages.

21 WHEREFORE, Defendants pray judgment as follows:

22 1. That Plaintiff take nothing by way of its Complaint in the manner in which the
23 matter is pleaded and that the same be dismissed with prejudice;

24 2. For reasonable attorney fees and court costs in being required to defend this
25 action; and

26 3. For such other and further relief as to this Court appears just and proper.

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1 DATED this 23rd day of November, 2009.

2 **GOICOECHEA, DI GRAZIA,**
3 **COYLE & STANTON, LTD.**
4 Attorneys for Defendants Queenstake Resources
5 USA Inc. and Queenstake Resources USA Inc.
6 Employee Benefit Plan
7 530 Idaho Street
8 P.O. Box 1358
9 Elko, NV 89803

10 By: 
11 **GARY E. DI GRAZIA**
12 Nevada State Bar No. 198

13 **CERTIFICATE OF SERVICE**

14 Pursuant to F.R.Civ.P. 5(b), I certify that I am an employee of GOICOECHEA,
15 DI GRAZIA, COYLE & STANTON, LTD., and that on this 23rd day of November, 2009, I
16 served a true and correct copy of the foregoing document, by:

17 **All parties signed up for electronic filing have been served via electronically. All**
18 **others are served by placing a true copy thereof in a sealed envelope placed for**
19 **collecting and mailing in the United States mail, at Elko, Nevada, postage prepaid,**
20 **following ordinary business practices.**

21 Mark Douglas Herbert, Esq.
22 2215 Ford Street
23 Golden, CO 80401

24 Troy E. Peyton, Esq.
25 703 South Eighth Street
26 Las Vegas, NV 89101

27 *Attorneys for Plaintiff*

28 
SHARON MATHIAS

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